Tax Law Changes in the Inflation Reduction Act of 2022 (H.R. 5376)

Article By:

Amit Kalra, PC

Andrew W. Ratts

Megan P. La Tronica

On August 7, 2022, the Senate passed the Inflation Reduction Act of 2022 (H.R. 5376) (the "Reconciliation Bill") on a party line vote with the deciding vote cast by the Vice President. The Senate's passage of the Reconciliation Bill likely satisfies the requirements for a Proposed Change in Tax Law, as defined under most tax equity financing documents. However, in general, those agreements require that only adverse Proposed Changes in Tax Law be reflected in the Base Case Model in advance of a Funding Date. In general, changes that affect the tax capacity of an investor are not within the scope of a Proposed Change in Tax Law but, as discussed below, even if the corporate alternative minimum tax were considered an adverse change, as finally adopted the AMT should not have a material adverse impact on tax capacity.

The Reconciliation Bill (officially entitled "An Act to provide for reconciliation pursuant to title II of S. Con. Res. 14") provides significant incentives for the development of renewable energy facilities, many of which are driven by tax incentives. Through the combination of extended tax credits and the adoption of Ron Wyden's resource agnostic "Clean Energy for America Act" the tax credits for wind and solar (as extended to stand alone storage) are restored to the pre-phase-out rates at least for construction beginning through 2033 which, assuming a continuation of the four year continuity safe harbor, extends the full credit period for 15 years. This long term extension provides certainty for wind and solar (and storage) development and financing to a degree never before available to the industry. In addition, the Reconciliation Bill seeks to ease the bottleneck created by limited tax equity capacity by permitting the transferability of tax credits. Although welcome, transferability leaves the benefits of accelerated depreciation unutilized. The actual impact of transferability remains to be seen.

There is little bad news in the Reconciliation Bill. The corporate alternative minimum tax – which was adopted to finance the significant investment in climate change – permits the use of tax credits to offset AMT tax liability. Likewise, last minute changes to the Reconciliation Bill reduce financial statement income by accelerated depreciation on tangible property, permitting depreciation deductions on renewable facilities to offset AMT tax liability.

The attached chart summarizes the provisions of Reconciliation Bill applicable to wind, solar, and standalone storage and provides our initial observations as to their impact. We intend to supplement the chart with a similar summary addressing carbon capture, biogas, clean hydrogen, and the other renewable resources addressed in the Reconciliation Bill. We also intend to maintain the summary as further guidance is issued and application of the provisions is adopted in the market. Please continue to check this page for further updates.

National Law Review, Volume XII, Number 224